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March 24, 2008

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: June 12, 2007

Case Number: TSO-0506

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter "the Individual") for access authorization. This decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's access authorization should be granted. For the reasons detailed below, it is my decision that the Individual's access authorization should be granted.

I. APPLICABLE REGULATIONS

The regulations governing the Individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." Under Part 710, the DOE may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility." 10 C.F.R. § 710.10(a). After such derogatory information has been received and a question concerning an individual's eligibility to hold an access authorization has been raised, the burden shifts to the individual to prove that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." See 10 C.F.R. § 710.27(a). The ultimate decision concerning eligibility is a comprehensive, common sense judgment based on a consideration of all relevant information, favorable and unfavorable. 10 C.F.R. § 710.7(a).

II. BACKGROUND

The Individual is an employee of a contractor at a DOE facility. In December 2005, his employer requested that the DOE grant him a security clearance. During its investigation of the Individual, the local security office (LSO) discovered information relating to an October 2006 arrest for Driving While Intoxicated and Possession of Drug Paraphernalia. The investigation also revealed that the Individual had other alcohol and illegal drug related arrests. In November 2006, the LSO

conducted a Personnel Security Interview (PSI) with the Individual. The LSO then referred the Individual to a DOE-contractor Psychiatrist (DOE Psychiatrist) to be evaluated. In her January 23, 2007, report, the DOE Psychiatrist opined that the Individual suffered from Alcohol Abuse.

In May 2007, the LSO informed the Individual that the DOE Psychiatrist's report, the Individual's alcohol-related arrests, and his statements concerning his use of alcohol as recorded in the PSI constituted derogatory information that created a substantial doubt as to his continued eligibility for an access authorization under 10 C.F.R. § 710.8(h) (Criterion H) and 10 C.F.R. §710.8(j) (Criterion J). Additionally, the Individual's October 2006 arrest for Possession of Drug Paraphernalia, an earlier 1986 drug-related arrest¹, his admissions in the PSI concerning marijuana and other illegal drug use, and his association with a friend who used marijuana in his presence twice a year were cited as derogatory information under 10 C.F.R. §710.8(k) (Criterion K). May 2007 Letter from Manager, Personnel Security Division, to Individual (Notification Letter).

A hearing was held in this matter. At the hearing, DOE presented one witness, the DOE Psychiatrist. The Individual offered his own testimony, as well as that of a psychiatrist who recently evaluated him (Evaluative Psychiatrist), his parents, his girlfriend, a co-worker, his employment supervisor, a Director of Adult Ministries at a church where the Individual was formerly employed and an advisor of the Individual during his graduate-school education.² The DOE submitted 10 exhibits (Ex. 1-10) for the record. The Individual submitted 21 exhibits (Ind. Ex. A-F).

III. FACTUAL FINDINGS

My factual findings are presented below.

During the period 1984 through 1990, the Individual was charged with a number of alcohol-related offenses. These are listed below:

<u>Date</u>	<u>Charge</u>
February 1984	Driving After Drinking
March 1986	Underage Purchase/Possession of Beer or Wine
May 1986	Underage Purchase/Possession of Beer or Wine
June 1986	Driving While Impaired ³
February 1990	Driving While Intoxicated

See Ex.10 at 7, 9; Ex. 9 at 77-78.

¹ The Individual was arrested in April 1986 for Possession of Marijuana and Drug Paraphernalia.

² With agreement of the parties, the DOE Psychiatrist and the Evaluative Psychiatrist were allowed to hear all of the testimony offered at the hearing and to ask questions of the witnesses.

³ The Individual was also charged with a number of other offenses for the same incident – Driving Left of Center, Speeding, Reckless Driving to Endanger, Driving Wrong Way on a One-Way Street/Road, Resisting/Obstructing a Public Officer and Driving While License Revoked.

In the early 1980s, when the Individual was 15 or 16 years old, he began to consume alcoholic beverages frequently when he went out with friends and drink to the point of intoxication. Ex. 9 at 33, 35. On these occasions the Individual would consume 6 to 8 beers. Ex. 9 at 33. During this period of his life, consumption of three beers within an hour would cause the individual to feel intoxicated. Ex. 9 at 35. When the Individual went to college in 1986, his alcohol consumption pattern changed to where he would consume three or four beers at a social occasion. Ex. 9 at 39-40. In 1990, the Individual began graduate school and his consumption of alcohol dropped further. Transcript of Hearing (Tr.) at 191-92. During the period 1990 to 1998, the Individual's consumption of alcohol rarely exceed two beers on any one occasion. Tr. at 196. During the period 2000 to 2006, the individual would consume four or five beers over the course of a three-hour period twice a month. Ex. 9 at 43. Upon consumption of this amount of beer, the Individual would feel that he had a "buzz" and would stop consuming alcohol.⁴ Ex. 9 at 42. During the period 2004 to 2007, the Individual would become intoxicated two or three times a year. Tr. at 98, 107-08, 151.

In October 2006, the Individual went to a concert with his girlfriend. Ex. 9 at 143. During the concert, the Individual consumed a number of beers. Tr. at 143. On the way back from the concert, the Individual's girlfriend, as the designated driver, drove the Individual and several acquaintances home. Tr. at 144. During the trip home, the Individual and his girlfriend had an argument. Tr. at 144. The argument continued as they arrived home and they both left the car and continued to argue in front of their house. Tr. at 145. Neighbors then called the police. Before the police arrived, the Individual, still angry with his girlfriend, got into their car and drove away. Tr. at 145. The Individual realized that he was intoxicated and immediately drove back home after travelling two blocks during which he punctured a tire running over a curb. Tr. at 202. The police arrived at his residence as he was attempting to repair the tire and he was subsequently arrested for Aggravated DWI. Tr. at 146; Ex. 2 at 4; Ind. Ex. D-2. In May 2007, the Individual stopped consuming alcohol. Tr. at 146.

The Individual also has a history of involvement with illegal drugs. As a youth during the period 1980 to 1986, he experimented with a number of illegal substances – mushrooms, hashish, crystal methamphetamine, valium (diazepam) and cocaine. Ex. 6 at 12; Ex. 9 at 80-83. Upon entering college in 1986, the Individual stopped using illegal drugs for an extended period of time. Ex. 9 at 91-92; Ex. 6 at 7-9. Nevertheless, the Individual used marijuana on three occasions during the period 1999-2004. Ex. 9 at 92; Ex. 10 at 8. During the period 1999 to 2004, the Individual associated with a friend twice a year who would use marijuana in his presence. Ex. 9 at 111. During his arrest for DWI in October 2006, a marijuana pipe was found in the

⁴ The DOE Psychiatrist reported that in her examination the Individual reported that he would drink six or more beers once every two months and that this consumption would cause him to feel intoxicated. Ex. 6 at 13. At the hearing, the Individual testified that he would have approximately six beers over an entire evening once every two months. Tr. at 221. He also testified that, when he told the DOE Psychiatrist that on occasion he would consume six beers at one time, he was referring to occasions where he would consume that amount over a whole evening. Tr. at 221. In his answer, he did not specify to the DOE Psychiatrist the amount of time he consumed the beers. Tr. at 221. Given the hearing testimony presented before me by the Individual's girlfriend and supervisor indicating that the Individual would be intoxicated two or three times a year, I find that during the period 2004 to 2007, the Individual was intoxicated approximately two or three times a year. See Tr. at 98, 107-08, 151.

Individual's automobile. Ex. 9 at 147. Consequently, he was also cited for Possession of Drug Paraphernalia. Ex. 6 at 9; Ind. Ex. D-1. At the hearing, DOE Counsel stipulated that there is no evidence that the Individual currently uses illegal drugs or that there is any evidence that the marijuana pipe belonged to the Individual. Tr. at 36-38.

In December 2006, the Individual was referred to the DOE Psychiatrist for an examination. After her examination of the Individual, the DOE Psychiatrist wrote an evaluative report. In this report, the DOE Psychiatrist diagnosed the Individual as suffering from Alcohol Abuse. The DOE Psychiatrist found that the Individual met criterion 2 as set forth in the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition-Text Revision (DSM-IV-TR) for Alcohol Abuse⁵ during the period 1984 to 1986, criterion 3 for the periods 1984 to 1986, 1990 and 2006 and criterion 4 for the period 1984 to 1986. Ex. 6 at 19. Citing the Individual's previous problems with alcohol and illegal drugs, and the fact that the Individual could be deemed to have met various DSM-IV-TR criteria at different points of his life, she determined that the most appropriate diagnosis for the Individual, using her clinical judgment, was that of Alcohol Abuse. Ex. 6 at 19. She further opined that such an illness could cause a defect in judgment and reliability. Ex. 6 at 21.

In May 2007, the Individual decided to abstain from alcohol and consumed no alcoholic beverages from that date to the date of the hearing. *See* Tr. at 146, 151-52; Tr. at 93, 99; Tr. at 81.

IV. Criteria H and J

Criterion H pertains to information that a person has "an illness or mental condition of a nature which, in the opinion of a board-certified psychiatrist, other licensed physician or a licensed clinical psychologist causes, or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). Criterion J pertains to information indicating that the Individual has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j). In the present case, the LSO based its findings regarding Criteria H and J on the DOE Psychiatrist's report, which finds that the Individual is suffering from a mental illness, Alcohol Abuse, which may cause a significant defect in judgment and reliability. The LSO also cites the information described above concerning the Individual's misuse of alcohol and his alcohol related arrests. Given the information before me, the LSO had sufficient grounds to invoke Criteria H and J. Because the Criteria H and J derogatory information centers on the Individual's misuse of alcohol, I will consider them together below.

With regard to Criteria H and J, the Individual seeks to mitigate the security concerns raised by establishing that: (1) he was not properly diagnosed as suffering from Alcohol Abuse under the

⁵ The DSM-IV criteria for the diagnosis of Alcohol Abuse require that an Individual meet one of the four following criteria within a 12-month period – (1) recurrent alcohol use resulting in a failure to fulfill major role obligations at work, school or home (criterion 1); (2) recurrent alcohol use in situations where it was physically hazardous (such as driving an automobile (criterion 2); (3) recurrent alcohol-related legal problems (criterion 3); and (4) continued alcohol use despite having recurrent social or interpersonal problems caused or exacerbated by the effects of alcohol (criterion 4). Ex. 6 at 18; DSM-IV-TR at 199.

DSM-IV-TR and in fact does not suffer from any type of alcohol problem; and (2) he now presents very little chance of becoming intoxicated in the future given his successful period of abstinence from alcohol and his clear understanding of the expectations that the DOE has for an individual who holds a security clearance.

1. Hearing Testimony

The DOE Counsel presented testimony from the DOE Psychiatrist. In her testimony, she reiterated her findings from her examination of the Individual. Using the criteria from the DSM-IV-TR, she determined that the Individual did not meet the criteria for a diagnosis of Alcohol Dependence. Tr. at 22-23, 36. She determined that the Individual met one of the four DSM-IV-TR criteria for Alcohol Abuse, criterion 3 (recurrent alcohol-related legal problems). Tr. at 28. Specifically, with regard to criterion 3, she cited the Individual's arrest in October 2006 for Aggravated DWI. While the DSM-IV-TR criteria require that the Individual have "recurrent" problems within a 12-month period, she still believed the Individual met criterion 3 because he had clearly met several Alcohol Abuse DSM-IV-TR criteria, criteria 2, 3 and 4, earlier in his life. Tr. at 29. She also cited other experts who opined that one DWI arrest is sufficient for an alcohol disorder diagnosis. Tr. at 30.

In rebuttal, the Individual presented his testimony as well as the testimony of a co-worker, his supervisor, and his current girlfriend to offer evidence concerning his past and current use of alcohol. Additionally, he presented testimony from the Evaluative Psychiatrist.

The Individual testified as to his previous alcohol-related arrests and his past and current alcohol use. His last use of alcohol occurred in May 2007. *See* Tr. at 231; Tr. at 146, 151-52; Tr. at 93, 99; Tr. at 81. He described his decision to stop using alcohol as follows:

So if there is a question that I have a dependence or if I have a problem with abuse of alcohol, then for my own personal gratification, I'd like to just prove it to myself and anybody else that wants to ask me, that my job and my life and my career, working for . . . the projects that I am working on over there are much more important than going out and having a couple of beers or six beers even over a period of time with friends. So I just made that commitment to myself to do it.

Tr. at 209. The Individual stated that his abstinence from alcoholic beverages has not caused him any problems in his social relationships. Tr. at 209-10. His supervisors have been supportive of him at company social events and he has not felt tempted to consume alcohol. Tr. at 210. He also testified that he has had a number of stressful life events occur since his decision to remain abstinent, such as his ex-wife's attempt to move their children to another state. Tr. at 212. None of these events have caused him to resume drinking alcohol. Tr. at 212-13.

The Individual's girlfriend testified that she has dated the Individual for about four and a half years and that she currently lives at the Individual's house. Tr. at 139-40. She testified that previous to his decision to stop consuming alcohol, the Individual was a "social" drinker and that during their relationship she has seen him "tipsy"⁶ approximately eight times and "drunk" three

⁶ She defined "tipsy" as a feeling "happy and jovial" from the consumption of alcohol. Tr. at 151.

times. Tr. at 141, 151. She also testified that in April or May 2007, the Individual made the decision not to consume alcohol. Tr. at 151-52. Since his decision, she has observed him at social events where alcohol was served and he has not consumed alcohol. Tr. at 157-59. Even when she consumes alcohol at their home, he does not partake of alcoholic beverages. Tr. at 157.

The Individual's current supervisor testified that before May 2007, he had observed the Individual in situations where alcohol was served. These events were predominately business-related events such as annual sales conferences. Tr. at 95. At these events, the Individual would consume alcohol at a level similar to that of the other attendees at the conference. In the four years he has been the Individual's supervisor, he believes he has seen the individual impaired to "the point that you wouldn't want him to drive" approximately eight times during various sales conferences. Tr. at 98, 107-08. The supervisor has never observed the Individual consume alcohol with a client during lunch or during normal business hours. Tr. at 94. Since the Individual's decision in May 2007 not to consume alcohol, he has attended sales conferences and has not consumed alcohol even when others are consuming alcohol. Tr. at 93, 99.

A co-worker (and mentee) of the Individual testified that he has known the Individual since 2001. Tr. at 79. He had never observed an occasion where the Individual's job performance or his social relationships had been affected by the consumption of alcohol. Tr. at 80. Since May 2007, the co-worker has not observed the Individual consuming alcohol. Tr. at 81.

The Evaluative Psychiatrist then testified as to his opinion concerning the Individual. He testified that he had spent a total of 15 hours evaluating the Individual beginning in July 2007. Tr. at 239. After evaluating the Individual, the Evaluative Psychiatrist opined that the Individual was neither Alcohol Dependent nor suffered from Alcohol Abuse, using the DSM-IV-TR as a diagnostic guide.⁷ Tr. at 240, 255. The Evaluative Psychiatrist stated that, with regard to the incidents in 1984 through 1986, his review of the Individual's history indicates that the Individual had one alcohol-related incident (for DSM-IV-TR purposes) in 1984, no incidents in 1985, and in 1986 one alcohol-related arrest. Tr. at 248. Consequently, with regard to the Alcohol Abuse criteria, during 1986, criterion 1 (failure to fulfill major role obligation) would not apply. With regard to criteria 2 (alcohol use in situations where it would be dangerous to do so), there was but one alcohol-related incident. With regard to criterion 3 (recurrent alcohol-related legal problems), there was one alcohol incident in 1984 and one in 1986. Tr. at 249. With regard to criterion 4 (alcohol use despite having persistent or recurrent social or interpersonal problems caused by the effects of alcohol) for Alcohol Abuse, his review of the evidence indicates that the Individual's misuse of alcohol was part of a group activity and not a solitary event. Tr. at 250. The Individual, at this time, was not experiencing problems where his consumption of alcohol set him apart from his friends or caused other difficulties. Tr. at 250. Further, in evaluating his alcohol history during 1986, the Evaluative Psychiatrist believes it was significant that this was a period where he was leaving high school to go to college and, as such, represented an adolescent reaction to his life situation. Tr. at 248, 259-60. His studies of adolescents like the Individual, who had heavy alcohol and drug use histories in high school and who were leaving difficult family circumstances and did not maintain similar alcohol or drug consumption habits in college,

⁷ In his testimony, the Evaluative Psychiatrist described as part of his professional experience, his involvement in the field study that designed the forerunner of the DSM-IV-TR, the Diagnostic and Statistical Manual of Mental Disorders, 3rd Edition. Tr. at 234.

indicated that such adolescents were no more likely to have alcohol problems in the future than adolescents who were teetotalers in high school. Tr. at 243-44. Consequently, in light of the above factors, he believes that criterion 4 does not apply during the period 1984 to 1986. Tr. at 251. The 1990 and 2006 arrests were solitary incidents and not recurrent for purposes of the DSM-IV-TR criteria. Tr. at 249-50. With regard to the 2006 arrest, the Evaluative Psychiatrist noted that the Individual showed good judgment in immediately returning to his house when he realized he was intoxicated and should not be driving. Tr. at 250.

In making his determination that the Individual does not suffer from Alcohol Abuse, the Evaluative Psychiatrist found the Individual to be credible. Significantly, the Individual's account to the DOE Psychiatrist of the number of alcohol beverages he had consumed before his 2006 arrest (as recorded in her report) corresponded to the Individual's measured Blood Alcohol Content, 0.19, as reported in the arrest.⁸ Tr. at 253-54. Also important to the Evaluative Psychiatrist's opinion that the Individual does not suffer from an alcohol disorder is the fact that the Individual has been able to remain abstinent from alcohol even during a vacation and the holiday season as well as during periods of stress as a parent during the five months he has been evaluating the Individual. Tr. at 254, 257-58. The Evaluative Psychiatrist also found it significant that when he informed the Individual of his opinion that he does not have an alcohol problem and informed the Individual that he could consume alcohol if he wished, the Individual chose to remain abstinent. Tr. at 246.

After reviewing all of the information obtained from his examination of the Individual, the Evaluative Psychiatrist concluded that the Individual does not suffer from an illness or mental condition which causes or may cause a significant defect in judgment and reliability. Tr. at 257. He also opined that that "it was far more likely than not, based on my evaluation, that [the Individual] will not have a drinking problem in the future that would compromise his ability to function fully and securely in whatever job he has." Tr. at 269.

Upon hearing all of the testimony, the DOE Psychiatrist declined to change her diagnosis of the Individual. Tr. at 282. However, she testified that her prior doubts about the Individual's credibility have been resolved and that she considered it a mitigating factor that the Individual stopped drinking alcohol before he had read her report. Tr. at 282. She also stated that based on the testimony, she would recommend a reduced period of abstinence - one year - for the Individual to be considered reformed, instead of the two-year period she recommended in her report. Tr. at 283.

⁸ In her report, the DOE Psychiatrist raised questions about the Individual's veracity after her calculation of the Individual's Blood Alcohol Content (as reported in the Individual's 2006 arrest) did not match the number of drinks the Individual reported having prior to the arrest. *See* Ex. 6 at 14-15. Her calculation indicated that the Individual must have underreported the number of drinks he had prior to the arrest. However, at the hearing, the DOE Counsel and the Individual's counsel stipulated that an expert in pharmacology would opine that the Individual's reported consumption of alcohol (as told to the DOE Psychiatrist) was consistent with the Individual's reported Blood Alcohol Content. Tr. at 53-55. Consequently, the Individual did not solicit testimony from the expert in pharmacology. After hearing all of the testimony, the DOE Psychiatrist testified that the Individual's credibility was no longer an issue. Tr. at 278.

2. Analysis of Hearing Testimony and Record Concerning Criteria H and J

Upon my review of the testimony presented at the hearing and the record in this matter, I find the Individual has presented sufficient evidence to resolve the Criteria H and J derogatory information related to the DOE Psychiatrist's diagnosis of Alcohol Abuse.

I find that the Evaluative Psychiatrist's testimony is persuasive on this issue. His application of the DSM-IV-TR criteria was more consistent than that of the DOE Psychiatrist. Specifically, I found the Evaluative Psychiatrist's application of the facts of this case to the DSM-IV-TR criteria to be straightforward and consistent with the language of the DSM-IV-TR criteria. While I recognize that the DSM-IV-TR criteria were not meant to be used in "cookbook" manner, I found the DOE Psychiatrist's application of 20-year old facts to this case to support her clinical judgment to be less convincing. This is especially so since the diagnosis at issue is Alcohol Abuse, which is a time-dependent diagnosis. *See* Tr. at 25. Also significant was the fact that the Evaluative Psychiatrist was able to spend approximately 15 hours with the Individual, as compared to the two hour examination of the DOE Psychiatrist and therefore had a more extensive basis to form his opinion as to the Individual's condition. *See* Tr. at 239.

The Individual's current period of abstinence was seven months at the time of the hearing and therefore relatively limited. Nevertheless, it provides support that the Individual can cope with life stressors without the need to misuse alcohol. I found the Individual to be a credible witness and I believe that he now realizes the importance of avoiding the excessive use of alcohol. He has shown his dedication to not using alcohol even in social events associated with sales meetings where a significant portion of his alcohol consumption previously occurred.

The DOE Psychiatrist also opined, however, that the Individual was a user of alcohol habitually to excess. This finding is not a psychiatric diagnosis. Tr. at 13. While I find that the record indicates that the Individual could be properly found to have been a user of alcohol habitually to excess in his adolescent years, approximately 20 years ago, his most recent history of intoxication prior to his current abstinence (in the past four years) indicates that he was intoxicated only two or three times a year. I do not find this rate of intoxication sufficient to conclude that the Individual has recently been a user of alcohol habitually to excess. Further, for the reasons described above, I find that by resolving concerns related to excessive alcohol use, the Individual has resolved the security concerns raised by his prior use of alcohol habitually to excess.

V. Criterion K

Criterion K refers to information indicating "[t]rafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.)" 10 C.F.R. § 710.8(k). The Individual's previously admitted use of illegal drugs and his arrest in 1986 for possession of marijuana justify the invocation of this criterion in the Notification Letter.

As referenced above in my factual findings, the DOE Counsel has stipulated that there is no evidence that the Individual currently uses illegal drugs or that there is any evidence that the marijuana pipe belonged to the Individual. Tr. at 36-38. Consequently, the only remaining Criterion K concern arises from the Individual's association with a friend who uses illegal drugs. *See* Tr. at 38 (DOE Counsel assertion that the only Criterion K issue is Individual's association with an illegal drug user).

1. Hearing Testimony

At the hearing, the co-worker and the Individual's supervisor testified that he had never seen or known him to associate with illegal drug users since the time he became acquainted with the Individual beginning in 2001. Tr. at 81, 94-95. His girlfriend testified that she had no knowledge that any of their friends or acquaintances had ever used illegal drugs until the marijuana pipe was found in their car during the October 2006 DWI arrest. Tr. at 161-62, 165. They have had no contact since then with the individuals who left the marijuana pipe in their car. Tr. at 165.

The Individual testified that, with regard to his friend who used marijuana in his presence, he contacted him in the summer of 2007 and informed him that "I would not associate with him as long as he keeps smoking pot." Tr. at 207. He has not been in contact with that friend since that conversation. The Individual further testified:

I completely understand the concern that the DOE has. I have no intention of being around anyone that smokes marijuana, especially if they are smoking it when I am there, but definitely -- I understand the need not to associate with anyone who does that, or other illegal drugs for that matter.

Tr. at 208.

2. Analysis of Hearing Testimony and Record Concerning Criterion K

Given the evidence before me, I find that the Individual has resolved Criterion K concerns arising from his association with a friend who uses illegal drugs. I found the Individual's testimony that he now understands the importance of avoiding any contact with individuals who are involved with illegal drugs credible and persuasive. He also has severed contact with the one friend who had used marijuana in his presence. The girlfriend's testimony to the effect that she had no knowledge that their friends or acquaintances used illegal drugs until the discovery of the marijuana pipe in their car during the October 2006 DWI arrest suggests that the Individual's contact with users of illegal drugs was minimal. With respect to the contact that arose from the discovery of the marijuana pipe in their car, I find it to be inadvertent. The testimony of the Individual's supervisor and co-worker is also credible on the issue regarding the Individual's lack of contact with people who use illegal drugs. I also note that the DOE Psychiatrist also finds the Individual to be credible. Tr. at 278. Given the testimony supporting the Individual's lack of contacts with people who use illegal drugs and the Individual's own testimony concerning the severing of contacts with the one person who on several occasions used marijuana in his presence, I find that the Criterion K concerns are resolved.

VI. CONCLUSION

As explained above, I find that the security concerns under Criteria H, J and K are resolved. I conclude that granting the Individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Consequently, the Individual's access authorization should be granted. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Hearing Officer
Office of Hearings and Appeals

Date: March 24, 2008